United Nations CAT/C/TKM/CO/2

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
23 January 2017

Original: English

Committee against Torture

Concluding observations on the second periodic report of Turkmenistan*

1. The Committee against Torture considered the second periodic report of Turkmenistan (CAT/C/TKM/2) and the replies to the list of issues (CAT/C/TKM/Q/2/Add.1) at its 1480th and 1483rd meetings (see CAT/C/SR.1480 and 1483), held on 21 and 22 November 2016, and adopted the present concluding observations at its 1496th and 1497th meetings, held on 1 and 2 December 2016.

A. Introduction

2. The Committee appreciates the timely submission by the State of its report and the replies to the list of issues. It welcomes the dialogue with the State party's delegation and the oral and written replies provided to the concerns raised by the Committee.

B. Positive aspects

3. The Committee welcomes the ratification of or accession to the following international instruments by the State party:

(a) The 1954 Convention relating to the Status of Stateless Persons, on 7 December 2011;

(b) The 1961 Convention on the Reduction of Statelessness, on 29 August 2012.

4. The Committee welcomes the State party's initiatives to revise its legislation in areas of relevance to the Convention, including:

(a) The adoption in September 2016 of the new Constitution, which, inter alia, prohibits torture and ill-treatment;

(b) The adoption on 4 August 2012 of amendments to the Criminal Code, including the addition of articles 182 and 1821, which establish torture as a separate criminal offence, define torture and establish criminal liability for the use of torture, and the adoption on 9 November 2013 of amendments on alternatives to detention;

* Adopted by the Committee at its fifty-ninth session (7 November-7 December 2016).

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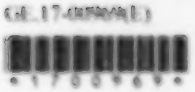

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(c) The amendments to the Code of Criminal Procedure of 4 August 2011, 31 March 2012 and 22 December 2012;

(d) The amendments to the Penalties Enforcement Code of 25 March 2011, 29 August 2013 and 1 March 2014;

(e) The adoption on 26 March 2011of the Legal Status of Foreign Nationals in Turkmenistan Act;

(f) The adoption on 31 March 2012 of the Migration Act;

(g) The adoption on 4 August 2012 of the Refugees Act;

(h) The adoption on 22 June 2013 of the Turkmen Citizenship Act;

(i) The amendments to the Code of Administrative Offences outlawing the use of torture, violence and other forms of cruel, inhuman or degrading treatment or punishment during administrative proceedings, which entered into force on 1 January 2014;

(j) The adoption on 23 May 2015 of the Health Protection Act, which provides for an independent medical expert to examine persons deprived of their liberty;

(k) The adoption on 12 January 2016 of the Act on State Protection of Victims, Witnesses and Other Participants in Criminal Proceedings.

5. The Committee also welcomes the initiatives of the State party to amend its policies, programmes and administrative measures to give effect to the Convention, including:

(a) The adoption of the National Strategy for the Prevention and Control of Tuberculosis for 2008-2015, the drawing up of the National Tuberculosis Prevention and Control Programme for 2010-2015 and the holding on 26 February 2015 of a round table on issues related to tuberculosis in prisons;

(b) The approval by the President of national plans of action for gender equality for 2015-2020, for combating trafficking in persons for 2016-2018 and for human rights for 2016-2020;

(c) The presidential order of 1 June 2012 adopting the General Programme of Turkmenistan on the Development of the Juvenile Justice System;

(d) The presidential decision of 11 April 2014 on improving conditions of detention in correctional institutions, remand centres and special rehabilitation centres, including with respect to detainees' diet and living conditions.

C. Principal subjects of concern and recommendations

Issues pending from the previous reporting cycle

6. The Committee notes the information provided by the State party on 31 August 2012 on the implementation of the recommendations contained in paragraphs 9, 14 and 15 (b) and (c) of the Committee's concluding observations on the initial report of Turkmenistan (CAT/C/TKM/CO/1), in which the State party was called upon to ensure the provision, in practice, of safeguards against torture; provide access for international monitoring bodies, either governmental or non-governmental, to all detention facilities; permit visits to the country by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Working Group on Arbitrary Detention; inform the relatives of individuals detained incommunicado of their fate and whereabouts, and facilitate family visits; and ensure prompt, impartial and thorough investigations into all outstanding cases of alleged disappearances. Nonetheless, the Committee regrets that the State party has not implemented its recommendations.

Impunity for acts of torture and ill-treatment

7. The Committee is seriously concerned about consistent allegations of widespread torture and ill-treatment, including severe beatings, of persons deprived of their liberty, especially at the moment of apprehension and during pretrial detention, mainly in order to extract confessions. It is also gravely concerned about continued reports about impunity for acts of torture since no cases of torture have been recorded or examined by the State party's courts during either the previous or the current reporting periods. The Committee regrets the State party's failure to provide information to the Committee indicating that it has effectively investigated a number of widely publicized reports of torture alleged to have taken place during the period under review (arts. 2, 4, 10-14 and 16).

8. The Committee reiterates its recommendation that the State party should take immediate and effective measures to prevent acts of torture and ill-treatment throughout the country, and that it should also take vigorous steps to eliminate impunity for alleged perpetrators of such acts (see CAT/C/TKM/CO/1, para. 6). In addition, the State party should:

(a) Ensure that the President issues a public statement affirming unambiguously that torture will not be tolerated;

(b) Announce that investigations and prosecutions will be carried out promptly against direct perpetrators of torture and those with command responsibility in all cases and issue a warning that anyone who commits acts of torture or is otherwise complicit in or acquiesces to torture will be held personally responsible before the law and will be subject to criminal prosecution and appropriate penalties;

(c) Ensure that all reports of torture and ill-treatment by public officials, including the police and prison staff, are investigated promptly, effectively and impartially by an independent mechanism with no institutional or hierarchical connection to the investigators and the alleged perpetrators;

(d) Ensure that impartial investigations are opened promptly into allegations of torture mentioned during the review of the State party, including: the alleged beating of five prisoners at the Seydi labour camp, in February 2015; the alleged torture in detention of Bahram Hemdemov, a Jehovah's Witness, in May 2015; the arrest, severe beating and involuntary detention in a drug rehabilitation centre of Mansur Masharipov, a Jehovah's Witness, in July 2014; and the alleged torture of 19 individuals suspected of connections with the Islamic civic movement Hizmet at the pretrial detention facility in Anau, in September 2016;

(e) Ensure that all persons under investigation for having committed acts of torture or ill-treatment are immediately suspended from their duties and remain so throughout the investigation;

(f) Bring the perpetrators of acts of torture and ill-treatment to justice and, when they are convicted, impose appropriate sentences, and provide proper compensation to victims of torture;

(g) Ensure that defendants and their lawyers are able to obtain video and audio recordings of interrogations at no cost to the defendant and that such recordings may be used as evidence in court.

Incommunicado detention and enforced disappearances

9. The Committee remains concerned at continued reports that an estimated 90 persons are being held by the State party in long-term incommunicado detention, a practice that amounts to enforced disappearance and violates the Convention. It is particularly concerned

about the State party's failure to inform the Committee of the whereabouts of Boris and Konstantin Shikhmuradov, Batyr Berdyev and Rustam Dzhumayev, and of a number of other persons who were convicted in connection with the assassination attempt on the former President in November 2002 (arts. 2, 11-14 and 16).

10. **The Committee reiterates its recommendations (see CAT/C/TKM/CO/1, para. 15) that the State party should:**

(a) **Put an end to incommunicado detention and ensure that all persons held incommunicado are released or are allowed to receive visits from their family members and lawyers;**

(b) **As a matter of priority, inform the Committee of the fate and whereabouts of all persons convicted and imprisoned for allegedly attempting to assassinate the former President;**

(c) **Take the measures necessary to ensure prompt, impartial and thorough investigations into all outstanding cases of alleged disappearance and prosecute those responsible, notify the relatives of the victims of the outcomes of such investigations and prosecutions, and provide remedy, as appropriate.**

Arbitrary arrest, imprisonment and alleged torture and ill-treatment of human rights defenders and journalists

11. The Committee remains concerned about the numerous and consistent allegations of serious acts of intimidation, reprisals, threats and arbitrary arrests and imprisonment of human rights defenders and journalists in retaliation for their work, and of their relatives, as well as numerous reports that such persons have been subjected to torture and ill-treatment while in detention. It is particularly concerned about the State party's failure to conduct a criminal investigation into reports that Altymurad Annamuradov, the brother of journalist Chary Annamuradov, was abducted and brutally beaten in retaliation for his brother's work, and that the beating led to his death on 4 September 2016. While noting the State party's comment that Mr. Annamuradov had died at home of natural causes, the Committee is seriously concerned that there has been no investigation into his case, particularly given that three of Chary Annamuradov's brothers had previously died under suspicious circumstances following his departure from the country in 1999. The Committee is also concerned by the State party's failure to release activists Gulgeldy Annaniyazov, Annakurban Amanklychev and Sapardurdy Khajiev and journalist Saparmamed Nepeskuliev from detention, pursuant to the decisions of the Working Group on Arbitrary Detention (see A/HRC/WGAD/2013/22, A/HRC/16/47 and A/HRC/WGAD/2015/40). The Committee is concerned about reports that journalists continue to be harassed and notes with concern the information about the harassment of Soltana Achilova (arts. 2, 11-14 and 16).

12. **The Committee welcomes the verbal assurances provided by the representative of the State party at the fifty-ninth session of the Committee that persons who have provided information to and cooperated with the Committee will not be intimidated, threatened or face any reprisals by the Government of Turkmenistan, in the light of article 13 of the Convention. The State party should:**

(a) **Ensure that human rights defenders and journalists are able to conduct their work and activities freely in the State party;**

(b) **Release from detention human rights defenders and journalists who have been imprisoned and are in detention as retaliation for their work;**

(c) **Investigate promptly, thoroughly and impartially all allegations of harassment, arbitrary arrest, torture and ill-treatment of human rights defenders and**

journalists, including those cited above involving Mr. Annamuradov, Mr. Annaniyazov, Mr. Nepeskuliev and Mr. Achilova, ensure their access to legal counsel, prosecute and punish appropriately those found guilty and provide redress to the victims.

Deaths in custody

13. The Committee remains deeply concerned about reports of deaths in custody owing to torture and about the State party's failure to ensure independent forensic examinations of such deaths. It is particularly concerned about the State party's failure to conduct a criminal investigation into the death in custody of journalist Ogulsapar Muradova in September 2006. The Committee notes the delegation's explanation that the cause of Ms. Muradova's death was determined to be suicide by hanging, but expresses concern about reports from her relatives that she had complained of ill-treatment in prison and about claims from Deutsche Welle that an autopsy revealed a wound to the back of her head and internal bleeding (arts. 2, 11-14 and 16).

14. **The Committee reiterates its recommendations (see CAT/C/TKM/CO/1, para. 16) that the State party should:**

(a) **Ensure independent forensic examinations in all cases of death in custody, provide autopsy reports to the family members of the deceased and, if requested, permit them to commission independent autopsies;**

(b) **Ensure that the courts in the State party accept the results of independent forensic examinations and autopsies as evidence in criminal and civil cases;**

(c) **Promptly, thoroughly and impartially investigate all incidents of death in custody, make the results of those investigations available to the public, prosecute those responsible for violations of the Convention resulting in such deaths and punish them accordingly, if convicted;**

(d) **Provide the Committee with data on all deaths in custody, disaggregated by the facility in which the deceased was detained, the age and sex of the victim and the outcome of the inquiry into the deaths in custody, and on any redress provided to relatives;**

(e) **Inform the Committee of any investigation undertaken during the period under review into deaths alleged to be the result of torture, ill-treatment or wilful negligence,**

(f) **Review the case of death in custody of Ms. Muradova and ensure that a thorough investigation is conducted into allegations that autopsy results indicate that she may have died as a result of torture while in detention.**

National human rights institution

15. The Committee is concerned that the Act on the Commissioner for Human Rights (Ombudsman) has still not been adopted by the *Mejlis* (art. 2)

16. **The Committee reiterates the recommendation contained in its previous concluding observations that the State party should proceed with the establishment of a genuinely independent national human rights institution in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (see CAT/C/TKM/CO/1, para. 12). The Commissioner on Human Rights (Ombudsman) should have the competence to hear and consider complaints and petitions concerning individual situations, to**

monitor detention facilities and to make the results of its investigations public. The State party should ensure the implementation of the institution's recommendations with respect to awards of redress to victims and the prosecution of perpetrators, as well as the provision of adequate resources for its operation. The Committee further recommends that the State party make public the draft act on the Commissioner for Human Rights in order to facilitate the consideration of comments and input.

Independent complaints mechanism

17. The Committee is deeply concerned at the information provided by the State party that it received no complaints of torture during the reporting period and that no officials have therefore been prosecuted for torture during that period (arts. 2, 11-14 and 16).

18. **The Committee reiterates the recommendations contained in its previous concluding observations (see CAT/C/TKM/1, para. 11) and urges the State party to:**

(a) **Establish an independent and effective complaints mechanism for all places of detention;**

(b) **Facilitate the submission of complaints by victims of torture and ill-treatment, including by obtaining medical evidence in support of their allegations;**

(c) **Comply with article 8 of the Penalties Enforcement Code and facilitate the submission by convicted prisoners of proposals, statements and complaints to all entities covered by that article, namely the administration of the penal institution in which they are being held, its supervisory body and other authorities, the courts, the procuratorial authorities, civil society organizations and, if all domestic remedies have been exhausted, to international organizations; and provide the Committee with information on the number of such submissions and on how they are made in practice;**

(d) **Ensure in practice that complainants in all places of detention are protected against ill-treatment or intimidation as a consequence of a complaint made or any evidence given;**

(e) **Ensure that all reports of excessive use of force by law enforcement and prison staff are investigated promptly, effectively and impartially by an independent mechanism with no institutional or hierarchical connection to the investigators and the alleged perpetrators; ensure that all persons under investigation for having committed acts of torture or ill-treatment are immediately suspended from their duties and remain so throughout the investigation, while ensuring that the principle of presumption of innocence is observed; punish those convicted; and provide redress to victims.**

Monitoring of places of detention

19. The Committee remains concerned that the State party does not permit independent non-governmental organizations, particularly the International Committee of the Red Cross (ICRC), to monitor all detention facilities. It is also concerned that the State party has not extended invitations to United Nations special procedure mandate holders who have requested to visit the county, particularly the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Working Group on Arbitrary Detention. The Committee is also concerned that the Oversight Commission of the Penal Corrections Department, which monitors places of detention in the State party, is part of the Ministry of Internal Affairs and therefore lacks independence. It is also concerned about the absence of an independent oversight body to carry out independent inspections of all places of detention (arts. 2, 11 and 16).

20. **The Committee reiterates the recommendations contained in its previous concluding observations (see CAT/C/TKM/CO/1, para. 14) and urges the State party to:**

(a) **Establish a national system that independently, effectively and regularly monitors and inspects all places of detention without prior notice and that is able to meet in private with detainees and receive complaints;**

(b) **Grant access to independent organizations, in particular ICRC, to all detention facilities in the country and expedite the signing of a memorandum of understanding with ICRC;**

(c) **Strengthen cooperation with the United Nations human rights mechanisms by permitting visits as soon as possible by special procedure mandate holders who have requested them, in particular the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Working Group on Arbitrary detention, in conformity with the terms of reference for fact-finding missions by special rapporteurs and special representatives (E/CN.4/1998/45);**

(d) **Consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.**

Fundamental legal safeguards

21. The Committee is concerned that persons deprived of their liberty do not in practice enjoy all fundamental legal safeguards against torture from the moment of their apprehension (arts. 2, 11 and 16). The Committee is further concerned that many people are held in custody for more than 48 hours and that the State party's law permits suspects to be held in detention, during the investigation of a criminal case, without being presented before a judge for up to six months, and even longer with authorization from the Procurator General (arts. 2, 11 and 16).

22. **The State party should ensure that fundamental legal safeguards against torture are guaranteed in practice by appropriate means of regulation and not merely by law to all detained persons, including remand prisoners, from the outset of their deprivation of liberty, according to international standards. The State party should monitor the provision of such safeguards to persons deprived of their liberty and should ensure that any official who fails to provide them in practice is subjected to disciplinary or other appropriate punishment. Such rights include the right of detainees to:**

(a) **Be promptly informed, in a language that they understand, both orally and in writing, of their rights, the reasons for their arrest and the charges against them and to sign a paper confirming that they have understood the information provided to them;**

(b) **Undergo a medical examination by an independent doctor within 24 hours of their arrival in a place of detention;**

(c) **Have prompt and confidential access to a qualified and independent lawyer, or to free legal aid when needed, from the time of their apprehension;**

(d) **Promptly contact a family member or any other person of their choice about their detention immediately after apprehension;**

(e) **Be promptly brought before a competent, independent and impartial court within 48 hours of their apprehension;**

(f) **Have the legality of their detention challenged through an habeas corpus procedure and to have their detention recorded in a register at the place of detention and in a central register of persons deprived of their liberty, which their lawyers and family members can access.**

Conditions of detention in prisons

23. The Committee is concerned about the use of solitary confinement and the reduced regime for persons placed in solitary confinement, which has resulted in mental health problems and suicides. Additionally, while noting the renovations of existing facilities and the building of new ones during the period under review, the Committee remains deeply concerned about reports that inadequate material and hygienic conditions in places of deprivation of liberty, including continued severe overcrowding, inadequate bathing and toilet facilities, lack of access to an adequate quantity and quality of food, natural and artificial lighting, proper ventilation and health care, lack of outdoor activities and unnecessary restrictions on family visits continued during the period under review. The Committee is particularly concerned by reports that numerous prisoners may have died as a result of conditions at Ovadan-Depe prison. The Committee is also concerned about reports that prisoners with diseases such as active and multidrug-resistant tuberculosis continue to be held together with healthy prisoners, which results in high infection, morbidity and mortality rates among detainees. While noting the improvements made during the period under review in specialized facilities, the Committee is concerned about reports that prisoners with active tuberculosis are referred to the MR/K-15 hospital only when they are close to death or by bribing the relevant officials. The Committee is also concerned that the supervision of conditions of detention in detention facilities is not within the remit of judicial bodies (arts. 2, 11-14 and 16).

24. **The Committee reiterates the recommendations contained in its previous concluding observations (see CAT/C/TKM/CO/1, paras. 18-19) that the State party should:**

(a) **Ensure that solitary confinement remains an exceptional measure of limited duration;**

(b) **Intensify further its efforts to bring the conditions of detention in places of deprivation of liberty into line with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules);**

(c) **Reduce further prison overcrowding in all places of detention, including by renovating existing facilities and building new ones in accordance with international standards and implementing amended legislation allowing for alternatives to detention, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);**

(d) **Ensure that detainees are provided with adequate material and hygienic conditions, including bathing and toilet facilities, an adequate quantity and quality of food, adequate space for each prisoner, natural and artificial lighting, proper ventilation, health care, outdoor activities and family visits;**

(e) **Separate healthy prisoners from those suffering from active tuberculosis in all detention facilities, implement the National Tuberculosis Prevention and Control Programme and the short-course directly observed treatment programme foreseen by it, and provide specialized medical care at the MR/K-15 hospital and at other medical facilities to prisoners suffering from active and multidrug-resistant tuberculosis and equip them with proper ventilation and Dezar devices;**

(f) **Amend legislation in order to allow for judicial oversight of all places of detention and allow independent monitoring bodies to carry out regular unannounced visits to all places of detention and meet in private with detained persons.**

Violence in prison, including rape and other forms of sexual violence

25. The Committee remains concerned at continued reports of physical abuse and psychological pressure against detainees by prison staff, including ill-treatment, collective punishment and sexual violence, including rape, which have resulted in several suicides. It is particularly concerned at the absence of information on the reported rape of female detainees by public officials in 2007 in Ashgabat and in 2009 at the women's prison in Dashoguz (arts. 2, 11-14 and 16).

26. **The Committee reiterates the recommendations contained in its previous concluding observations (see CAT/C/TKM/CO/1, para. 18) that the State party should:**

(a) **Draw up a comprehensive plan to address the issue of violence, including sexual violence and rape, by inmates and prison staff in all detention facilities, including the women's prison colony in Dashoguz;**

(b) **Ensure effective investigations into all cases of violence, including sexual violence and rape, and inform the Committee about the outcome of investigations into the rape of female detainees by public officials in 2007 in Ashgabat and at the Dashoguz women's prison in 2009;**

(c) **Coordinate the judicial supervision of conditions of detention between competent organs, ensure thorough investigations of all allegations of torture and ill-treatment committed in detention facilities, punish perpetrators and provide medical and psychological rehabilitation to victims.**

Coerced confessions

27. Despite the existing national legislation, the Committee remains concerned about numerous reports of the continued widespread use of forced confessions as evidence in courts, about the absence of information on investigations into claims of torture by judges and about the lack of cases in which officials have been prosecuted and punished for extracting confessions (arts. 2 and 12-16).

28. **The Committee reiterates its recommendation that evidence obtained through any form of coercion or torture be inadmissible in all judicial proceedings, in line with article 15 of the Convention (see CAT/C/TKM/CO/1, para. 20). Judges should always investigate allegations of torture by defendants. The judiciary should review cases of convictions based solely on confessions, since many may have been based on evidence obtained through torture and ill-treatment. The State party should conduct prompt and impartial investigations into such cases, take appropriate remedial measures and provide information on whether any officials have been prosecuted and punished for extracting such confessions.**

Independence of the judiciary

29. While noting the adoption on 8 November 2014 of the revised Courts Act and the Revised Act on Enforcement Proceedings and the Status of Court Appointed Officers, the Committee remains concerned that, despite the changes in national legislation during the period under review, judges continue to be appointed and dismissed solely by the President, which affects the independence of the judiciary in cases involving violations of the Convention. It is concerned with the tenure in office of judges who are appointed for renewable five-year terms (arts. 2 and 13).

30. **The Committee reiterates its recommendation that the State party take all measures necessary to establish and ensure the independence of the judiciary, including by guaranteeing their tenure in office and severing administrative and other ties with the executive branch, in conformity with international standards, notably the Basic Principles on the Independence of the Judiciary (see CAT/C/TKM/CO/1, para. 10).**

Violence against women, including domestic and sexual violence

31. While commending the State party's zero-tolerance policy on violence against women and the adoption of the national plan of action for gender equality in Turkmenistan for 2015-2020, the Committee is concerned that domestic violence is not a separate crime in the Criminal Code. It is also concerned about the prevalence of violence against women in the State party, including in penitentiary facilities, and at the low number of complaints, investigations and prosecutions in this regard (arts. 2 and 12-16).

32. **The Committee recommends that the State party:**

(a) **Define and introduce domestic violence, including sexual violence and marital rape, as specific criminal offences in its Criminal Code, with appropriate sanctions, and that it consider drawing up a national plan of action to reduce violence against women;**

(b) **Ensure the effective implementation of the national plan of action for gender equality in Turkmenistan for 2015-2020 and regularly assess its results;**

(c) **Establish an effective and independent complaints mechanism for victims of domestic violence;**

(d) **Ensure that all allegations of violence against women, including domestic and sexual violence, are registered by the police, that all allegations of violence are promptly, impartially and effectively investigated and that the perpetrators of such violence are prosecuted and punished;**

(e) **Ensure that victims of domestic violence benefit from protection, including restraining orders, and have access to medical and legal services, including counselling, redress and rehabilitation, as well as to safe and adequately funded shelters throughout the country;**

(f) **Provide mandatory training for police and other law enforcement officials, social workers, lawyers, prosecutors and judges on the vulnerabilities of victims of gender-based and domestic violence.**

Non-refoulement

33. While welcoming the adoption by the State party of legislation establishing procedures for recognizing and protecting the rights of refugees, and noting the information provided by the State party that it granted Turkmen citizenship by presidential decree to a number of stateless persons and migrants during the reporting period, the Committee is concerned by reports that the State party did not register any new asylum seekers during the reporting period and regrets that the State party did not provide the information it had requested on the number of asylum requests considered by its authorities during the reporting period and the outcome of those requests (art. 3).

34. **The Committee recommends that the State party adopt the following measures in order to ensure that the prohibition against refoulement is respected in practice:**

(a) **Establish fair and efficient asylum and referral procedures that are accessible at all border points, including at international airports and transit zones;**

(b) **Ensure that asylum seekers, including detainees, have access to independent, qualified and free legal advice and representation, that their protection needs are duly recognized and that refoulement is prevented;**

(c) **Establish a system for collecting and providing the following data to the Committee and other relevant observers, for the period from 2012 to the present:**

(i) **The number of asylum applications received;**

(ii) **The number of foreigners who have been expelled, returned or otherwise refused entry at the borders, and to which countries;**

(iii) **The number of foreigners detained in detention facilities;**

(iv) **The number of individuals whose asylum applications are pending with the authorities.**

Involuntary placement and medical treatment in psychiatric hospitals and neuropsychological institutions

35. The Committee is concerned that persons with psychosocial disorders and mental disabilities may be placed in psychiatric hospitals and neuropsychological institutions without their consent. It remains concerned about reports that psychiatric hospitals continue to be misused to detain persons for non-medical reasons, including non-violent expression of political views (arts. 2, 11-13 and 16).

36. **The Committee reiterates the recommendation contained in its previous concluding observations (see CAT/C/TKM/CO/1, para. 17) that the State party:**

(a) **Take measures to ensure that no one is involuntarily placed in psychiatric hospitals and neuropsychological institutions for non-medical reasons;**

(b) **Release persons who have been forcibly placed in psychiatric hospitals for non-medical reasons and take appropriate measures to remedy the situation;**

(c) **Allow access to psychiatric hospitals and neuropsychological institutions to monitors and monitoring mechanisms that are independent of the health authorities and publish a brochure with its procedures and ensure its distribution to patients and their families;**

(d) **Ensure that patients have the right to be heard in person by the judge ordering the hospitalization and that the court always seeks the opinion of a psychiatrist who is not attached to the psychiatric institution admitting the patient;**

(e) **Ensure that hospitalization for medical reasons is decided only upon advice of independent psychiatric experts and that such decisions can be appealed.**

Derogations from the absolute prohibition of torture

37. While noting that the State party has adopted amendments to its national legislation that define and specifically criminalize torture, the Committee remains concerned that article 47 of the Constitution continues to stipulate that citizens' rights may be suspended during the imposition of a state of emergency or martial law, and does not clearly indicate that the prohibition of torture is non-derogable. It is also concerned that the Constitution does not clearly prohibit amnesties for torture and enforced disappearance (arts. 2 and 4).

38. **The Committee reiterates its recommendations (see CAT/C/TKM/CO/1, para. 8) that the State party should:**

(a) **Ensure that the absolute prohibition against torture is non-derogable, including during states of emergency and martial law, and that acts amounting to torture are not subject to any statute of limitations;**

(b) **Prohibit the granting of amnesty for the crimes of torture and enforced disappearance, which is incompatible with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.**

Status of the Convention in the domestic legal order

39. While noting that article 6 of the Constitution provides that international human rights treaties ratified and promulgated by Turkmenistan take primacy over national laws, the Committee takes note with concern that the provisions of the Convention have not been invoked directly before national courts (arts. 2, 4, 10, 12 and 13).

40. **The Committee reiterates its recommendation that the State party should ensure the full applicability of the provisions of the Convention in its domestic legal order and the practical implementation of article 6 of the Constitution (see CAT/C/TKM/CO/1, para. 7). The State party should provide law enforcement personnel and members of the judiciary with training on the Convention and its direct applicability so that they are taken into account by national courts.**

Follow-up procedure

41. **The Committee requests the State party to provide, by 7 December 2017, information on follow-up to the Committee's recommendations on incommunicado detention, on informing the Committee about the fate and whereabouts of all persons held incommunicado or who have been disappeared, on the intimidation, reprisals, threats and arbitrary arrests and imprisonment of human rights defenders, journalists and their relatives in retaliation for their work, and on the establishment of a genuinely independent national human rights institution in accordance with the Paris Principles (see paras. 10, 12 and 16 above). In that context, the State party is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations in the concluding observations.**

Other issues

42. **The Committee reiterates its recommendation that the State party consider making the declarations under articles 21 and 22 of the Convention (see CAT/C/TKM/CO/1, para. 26).**

43. **The Committee reiterates its recommendation that the State party consider ratifying the Optional Protocol to the Convention (see CAT/C/TKM/CO/1, para. 12).**

44. **The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet party.**

45. **The State party is requested to disseminate widely the report submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.**

46. **The State party is invited to submit its next periodic report, which will be its third, by 7 December 2020. For that purpose, the Committee invites the State party to accept, by 7 December 2017, the simplified reporting procedure consisting in the transmittal, by the Committee to the State party, of a list of issues prior to the submission of the report. The State party's replies to that list of issues will constitute its third periodic report under article 19 of the Convention.**